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IN THE UNITED STATES BANKRUPTCY COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

SACRAMENTO DIVISION

In The Matter of

Joseph Ching	) CASE NO. 2016-28538-C-7
	) CHAPTER 7
Debtor(s)	) ADVERSARY No.
Joseph Ching	) **ADVERSARY COMPLAINT TO**
Plaintiff(s)	) **DETERMINE DISCHARGE OF**
v.	) **DEBTS**
U.S. Department of Education, Navient,	) [11 U.S.C. § 523(a)(8)]
Wells Fargo Education Financial Service	)
Defendant(s)	) DATE: SEE SUMMONS

To The Court:

Plaintiff/Debtor –Joseph Ching (hereinafter referred to as Plaintiff), alleges as follows:

JURISDICTIONAL ALLEGATIONS

1. This adversary proceeding arises out of and is related to the above-captioned Chapter 7 case of Joseph Ching, Case No. 2016-228538, now pending in this United States Bankruptcy Court. Therefore this court has jurisdiction over this matter pursuant to 28 U.S.C. §§157, 1334.

2. Defendant(s) herein have claims against Plaintiffs, as defined by 11 U.S.C. §101(5)(A). The Complaint as set forth herein, involves **(A)** the determination of the dischargeability of Plaintiffs debts/obligations for student loans owed by the Defendant; and **(B)**

the declaration that the said debts/obligations to be discharged under the said bankruptcy proceeding pursuant to 11 U.S.C § 727(a). As such this proceeding constitutes a core proceeding pursuant to 28 U.S.C. §157(b)(2)(I).

3. Venue for this adversary proceeding is proper in this Court pursuant to 28 U.S.C. §1409(a).

PARTIES

4. Plaintiff – Joseph Ching is the debtor in Chapter 7 bankruptcy Case No. 2016-28538.

5. Defendant –U.S Department of Education, with its bankruptcy section located at 50 Beale Street, Suite 900, San Francisco, CA 94105, is an agency of the United States government.

6. Defendant –Navient, with its head office located at 123 Justison Street, Wilmington, DE 19801, and correspondence address of P.O. Box 9635, Wilkes-Barre, PA 18773-9635 is a private business entity whose true nature is unknown to Plaintiff.

7. Defendant – Wells Fargo Education Financial Service, with its office located at 301 East 58th Street North, Sioux Falls, SD 57117-5185, is a private business entity whose true nature is unknown to Plaintiff.

GENERAL ALLEGATIONS

8. The voluntary petition in Plaintiff's above mentioned Chapter 7 bankruptcy case was filed on 12/30/2016. The meeting of creditors in the said case was concluded on 2/8/2017.

9. Plaintiff received certain student loans which he believes are or were funded or guaranteed by U.S. Department of Education, and which are owned, assigned, serviced or collected by Navient and/or Wells Fargo Education Financial Service.

10. On or about August 21, 1985, Plaintiff sustained severe spinal injuries due to an accident, as a result of which Plaintiff is permanently paralyzed and physically disabled. Plaintiff is wheelchair bound. In addition, Plaintiff also suffers from a host of other medical problems.

Plaintiff's primary care physician has verified that Plaintiff suffers from pain in thoracic spine, thoracogenic scoliosis, small kidney, hydronephrosis, paraplegia, constipation, benign prostatic hyperplasia, benign essential hypertension, lower back pain, and scoliosis. Plaintiff's primary physician has stated that (a) because of Plaintiff's current medical problems he is wheelchair bound and is not able to work; (b) Plaintiff is not able to stand or walk for any length of time other than bed to chair transfers; (c) Plaintiff suffers hypertension and chronic pain, and (d) Plaintiff's medical problems appear to be terminal, and there is no treatment for his paraplegia and scoliosis. (See Exhibit A).

11. Due to Plaintiff's permanent disability and worsening medical condition as stated above, Plaintiff has zero income, and cannot secure or sustain any employment. Plaintiff's inability to secure employment or income or to change his financial circumstances is involuntary, due to his disability and his worsening, terminal medical problems.

12. Plaintiff's wife has a net income of $3,000.61. Plaintiff's household consists of Plaintiff, Plaintiff's wife, and Plaintiff's 82 year old mother-in-law. The minimal expenses for Plaintiff's household are $1,450 for rent; $50 for home maintenance, repair and upkeep; $300 for electricity and gas; $260 for phones and cable; $500 for food; $100 for clothing and laundry; $40 for personal care; $70 for out of pocket medical expenses; $250 for transportation; $50 for entertainment and recreation; $20 for charitable (church) donations; $150 for health insurance; $130 for automobile insurance; $500.89 for car-note payment; totaling approximately $3,870.89. Plaintiff's *monthly net income* calculated by deducting the household expenses from income, is $-870.28.

13. Plaintiff has made good-faith efforts to repay the debts/obligations owed to the Defendants, but is unable to repay the debts/obligations in any meaningful way.

14. As demonstrated by the above mentioned facts and circumstances, Plaintiff cannot repay any portion of the above mentioned debts/obligations without undue hardship, and due to

Plaintiff's permanent disability and terminal medical problems, Plaintiff's financial condition is unlikely to change despite a bankruptcy discharge of all his other debts.

REQUESTS

Wherefore and pursuant to 11.U.S.C Section 523(a)(8) and *Brunner v. N.Y. State Higher Educ. Servs. Corp.*, 831 F.2d 395 (2d Cir. 1987), Plaintiff requests the Court for an order declaring that the debts/obligations owed by Plaintiff to the Defendants are discharged upon the entry of an order of discharge in Plaintiff's said Chapter 7 bankruptcy case, and for such other relief as the Court deems just and proper.

Respectfully submitted by:

Date: 3/16/2017

Signature: /s/ Fred Ihejirika
FRED IHEJIRIKA
Attorney for Plaintiff